

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 2062.04  
COMPLAINT INVESTIGATOR: Sally Cook  
DATE OF COMPLAINT: September 29, 2003  
DATE OF REPORT: October 29, 2003  
REQUEST FOR RECONSIDERATION: no  
DATE OF CLOSURE: January 16, 2004

**COMPLAINT ISSUES:**

Whether the Jay School Corporation violated:

511 IAC 7-27-6(a)(2) by failing to ensure that the student's individualized education program (IEPs) dated August 27, 2003, and the student's IEP dated April 4, 2003, each includes a statement of measurable goals that describe what the student can be expected to accomplish within a twelve month period.

511 IAC 7-27-6(a)(5) by failing to ensure that the student's IEP dated April 4, 2003, included the anticipated length, frequency, location, and duration of services.

7-29-9(b) by failing to ensure that, when reporting to appropriate authorities a crime committed by a student with a disability, copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the school corporation reported the crime, to the extent permitted by the Family Educational Rights and Privacy Act and 511 IAC 7-23-1.

**FINDINGS OF FACT:**

1. The Student is fourteen years old and is eligible for special education and related services due to an emotional disability.
2. The Student's individualized education program (IEP) dated April 4, 2003, summarized the Student's present levels of performance (PLOP) and contained the following seven goals:
  - Behavior: \*\*\* will increase [the student's] inappropriate level to a more appropriate and functional level.
  - Personal care: \*\*\* will ↑ personal care skills from PLOP to more functional indep.
  - Domestic Living: \*\*\* will ↑ Domestic Living Skills from PLOP to more functional independence.
  - Protisipation[Participation]: \*\*\* will ↑ participation in PLOP to a more functional level.
  - Relationships: \*\*\* will ↑ Relationships skills to a more functional level.
  - Safety: [no annual goal stated]
  - Academic: \*\*\* will increase [the student's] ability to complete modified curriculum assignments from Present Level Of Proformance [Performance] to a more functional level.
3. The terms "appropriate and functional level," "functional independence," and "functional level" are not defined in the Student's IEP or discussed in the CCC notes.

4. The Indiana Department of Education, Division of Exceptional Learners (the Division), reviewed the Student's IEP dated April 4, 2003, in connection with an Application for Funding Support received by the Division on May 7, 2003. The Division sent a notice of Return for Correction of Procedural Errors and/or Additional Information (the Division's Return Notice). Item #2 of the Division's Return Notice stated, in part: "The annual goals in the student's IEP are not measurable...."
5. The Student's case conference committee (CCC) reconvened on August 18, 2003, and continued the CCC meeting on August 27, 2003, resulting in a revised IEP dated August 27, 2003, that contains the following four annual goals:
  - Reading Annual Goal: \*\*\* will increase functional reading skills from PLOP to more functional independence
  - Mathematics Annual Goal: \*\*\* will increase math skills from PLOP to more functional independence
  - Written expression Annual Goal: \*\*\* will increase written expression from PLOP to more functional independence
  - Behavior/Social Annual Goal: \*\*\* will increase behavior/social skills from PLOP to more functional independence
6. The term "more functional independence" is not defined in the Student's IEP or discussed in the CCC notes. The term "functional independence" is used in the ISTAR alternate assessment program to refer to a goal of 100% in the functional achievement standards of ISTAR. However, the Student's IEP does not use "functional independence" in the way that term is used in ISTAR. ISTAR does not use "functional independence" in connection with academic skills (reading, math, or written expression), and ISTAR does not address compliance with school/social rules.
7. Special education and related services were listed and described as follows, in the IEP dated April 4, 2003: consultation back to schools; educational services/instruction (small group); individual therapy (1x wk); group therapy (1-2x wk); medical evaluation; medication management; case management; transportation 7x year; ADL skills; functional life skills & recreations skills. The total instructional minutes were described as 24/7, consistent with the decision to place the Student in a private residential facility.
8. Item #3 of the Division's Return Notice stated:

"Although the services to be provided are specified in the IEP, there is no information concerning length, frequency, location, and duration as required by 511 IAC 7-27-6."
9. The Student's IEP dated August 27, 2003, specifically describes the length and frequency of EH instruction (173 minutes daily), the length and frequency of functional instruction (172 minutes daily), the type and amount of services from a therapist (consultation services for teachers and staff -- 45 minutes weekly), etc. Although Location is identified simply by the name of the school, the meaning of the location is clear because this IEP form distinguishes between services/minutes in general education classrooms and services/minutes in special education classrooms. Start Dates are identified as 8.19.03 for the services agreed upon as of the CCC meeting held August 18, 2003, and start dates for other services/classes are identified as starting 8.27.03. The duration date of 6.01.04 is noted on the first page of the Conference Summary/IEP.
10. On August 21, 2003, the Student is alleged to have engaged in conduct (hitting and attempting to kick a teacher) that the School considered to be a crime. On August 21, 2003, the principal telephoned the police department to report the occurrence. The police complaint file describes

the Student as a "special needs child." On August 22, 2003, the principal and the teacher went to the police department to report the Student's conduct.

11. On September 24, 2003, the School contacted the local police department to report that the Student had struck a teacher. A police officer came to the School, interviewed the teacher, required the Student's parents to come to the School, contacted the juvenile probation officer, and arranged for the Student to be transported to a juvenile facility.
12. The School did not transmit a copy of the Student's special education and disciplinary records to the police department or the juvenile probation officer, in connection with either the August 21, 2003, occurrence or the September 24, 2003, occurrence.
13. The School did not receive a judicial order, a lawfully issued administrative or judicial subpoena, or any other subpoena requiring the disclosure or transmittal of the Student's educational records.
14. The Student's parent(s) did not sign a Release authorizing the School to transmit the Student's educational records.
15. A handwritten behavior plan attached to the Student's IEP dated August 27, 2003, includes the following:

Severe clause: If non-compliance becomes a threat to [the Student's] safety or that of others, the police will be called.

When this clause was added to the Student's IEP, the School did not seek parental consent to disclose the Student's educational records to law enforcement or judicial authorities.

## **CONCLUSIONS:**

1. Findings of Fact #2, #3, and #4 indicate that, with respect to the IEP dated April 4, 2003, the annual goals were not measurable, as previously determined by the Indiana Department of Education, Division of Exceptional Learners. Findings of Fact #5 and #6 indicate that, with respect to the IEP dated August 27, 2003, the annual goals are not measurable. Therefore, a violation of 511 IAC 7-27-6(a)(2) occurred.
2. Findings of Fact #7 and #8 indicate that, although the IEP dated April 4, 2003, does contain the anticipated frequency for individual therapy, group therapy, and transportation, this IEP did not contain the anticipated length of any service or the frequency of other services or the location(s) of services. Therefore, a violation of 511 IAC 7-27-6(a)(5) occurred. However, Finding of Fact #9 indicates that appropriate corrective action has been taken.
3. Findings of Fact #10, #11, #12 indicate that, when reporting a crime committed by a student with a disability, the School did not transmit copies of the Student's special education and disciplinary records for consideration by the appropriate authorities to whom it reported the crime. Findings of Fact #13 and #14 indicate that disclosure of the Student's educational records was not permitted by the Family Educational Rights and Privacy Act and 511 IAC 7-23-1. Therefore, no violation of 511 IAC 7-29-9(b) occurred.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based upon the Findings of Fact and Conclusions listed above.**

## **CORRECTIVE ACTION:**

On or before December 19, 2003, the Jay School Corporation shall reconvene the Student's case conference committee to review the annual goals in the Student's current IEP. If undefined terms are used (including the term "more functional independence"), the terms must be defined so that the IEP describes what the Student can be expected to accomplish.

Documentation of compliance shall be submitted on or before January 7, 2004.